

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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SYMBOL TECHNOLOGIES, INC.,

U.S. DISTRICT COURT
WI

Plaintiff,

05-526

v.

05-C-0256 C

INTERMEC TECHNOLOGIES CORP.,

Defendant.

**DECLARATION OF
IRA J. SCHAEFER, ESQ. IN OPPOSITION TO
INTERMEC TECHNOLOGIES CORPORATION'S MOTION TO TRANSFER**

1. I declare that I am over 18 years of age and I am competent to make this declaration based on my own personal knowledge. I make this declaration on behalf of the Plaintiff, Symbol Technologies, Inc. ("Symbol").

2. I am currently a member of Hogan & Hartson L.L.P., outside counsel for Symbol in this matter against Intermec Technologies Corp. ("Intermec"). I also represent Symbol in the pending action against Intermec in the District of Delaware, *i.e.*, *Symbol Technologies, Inc. v. Intermec Technologies Corp.*, C.A. No. 05-146-SLR (D. Del.) (Robinson, C.J.), as well as the pending action that Intermec has initiated in Delaware, which was originally titled *Intermec IP Corp. v. Matrics, Inc.*, C.A. No. 04-357-GMS (D. Del.) (Sleet, J.), but is now captioned *Intermec IP Corp. v. Symbol Technologies, Inc.*, following Symbol's acquisition of Matrics, Inc.

3. The above two Delaware cases between Symbol and Intermec have not been consolidated, and Intermec has never sought to consolidate them. Each is assigned to a different judge, each is subject to its own discovery schedule and each will be tried separately.

4. With respect to the above-referenced case before Judge Sleet in Delaware, I am familiar with the conduct of discovery between the parties, and in that case, Symbol and Intermec have agreed to produce, and in fact have produced, documents in electronic format.

5. In the present case, Symbol alleges that Intermec infringes United States Patent Nos. 5,243,655 ("655 Patent") and 5,457,308 ("308 Patent"). The '655 Patent names a single inventor, Ynjiun P. Wang. Dr. Wang is no longer employed by Symbol, and upon information and belief, he now works for Hand Held Products, Inc., and resides in California. The inventors of the '308 Patent are Glenn Spitz and Nelson Saenz, neither of whom currently works for Symbol. Mr. Spitz lives in New York, and the last available information for Mr. Saenz is that he was living in New York, although I do not know if he continues to reside there.

6. The two Symbol patents in this case relate to bar-code decoding technology. In contrast, the four patents asserted by Symbol in Delaware relate to wireless local area network ("WLAN") technology. As Mr. Martino states in his declaration, the two technologies have nothing to do with each other. Even when used together in a single product, the technologies are still wholly distinct, just as a car radio's technology is wholly different than a car engine's technology, notwithstanding the fact that they are both used in a car.

7. Because the patents at issue and the underlying technologies have nothing to do with each other, documents, depositions and other discovery in this case would not overlap with discovery in the Delaware case. In particular, the key liability questions in these cases will be infringement of the patents at issue, validity of the patents at issue and willfulness. In that regard, at least the following inherent differences exist between discovery in the two cases:

- the patent file histories and inventorship documents are different;
- the inventors are different;

- Symbol's wireless engineers and documents are located primarily in California, while its bar-code decoding engineers and documents are located primarily in New York;
- the documents concerning the operation of Intermec's wireless products are different than the documents concerning how its bar-code readers decode various bar-code symbologies;
- the Intermec engineers that design Intermec's wireless capabilities are expected to be different than the Intermec engineers that design bar-code decoders;
- whatever prior art Intermec may find regarding Symbol's wireless patents would not relate to bar-code decoding, and vice versa;
- the parties' technical experts on the various technologies are expected to be different; and
- opinions of counsel, if any, will be different.

8. Importantly, with respect to judicial economy, the present case is not "related to" the pending Delaware case, and so there is no guarantee that the same judge would hear both cases. In any event, the claims of these patents will be construed independently, with no overlap in technology tutorials, as explained in Mr. Martino's declaration. And, whether or not the case is consolidated before Chief Judge Robinson in Delaware, the cases would almost certainly be tried separately.

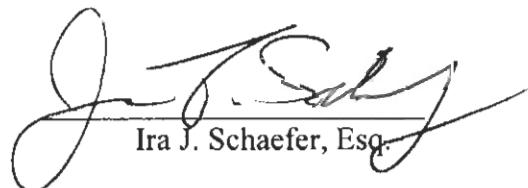
9. For example, Symbol sued on its WLAN patents in Delaware because Symbol had already litigated WLAN patents in Delaware, and the Delaware Court has already construed several of those patents. That case was *Symbol Technologies, Inc. v. Proxim, Inc.*, C.A. No. 01-801-SLR (D. Del.) (Robinson, C.J.)), and I represented Symbol in that case as well. The patents

at issue in this case were not at issue in that case, and in fact, were never before a Delaware Court or any other Court.

10. In the *Proxim* case, Symbol sued on four related wireless local area network ("WLAN") patents, and Proxim counterclaimed with one of its own WLAN patents. Ultimately, Symbol dropped one of its patents from the case, and there were a total of four patents at issue in the case, all relating to aspects of WLAN technology. Nevertheless, and although neither party moved to sever Proxim's counterclaim from Symbol's claims, Chief Judge Robinson *sua sponte* had Symbol's patent claims and Proxim's patent counterclaim tried to separate juries.

11. Exhibit A hereto is a true and correct copy of the Federal Judicial Caseload Statistics 2004, published by the Administrative Office of the United States Courts, and is available at <http://www.uscourts.gov/caseload2004/contents.html>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 26, 2005.



Ira J. Schaefer, Esq.

Table C-5.
U.S. District Courts—Median Time Intervals From Filing to Disposition,
Terminated, by District and Method of Disposition,
During the 12-Month Period Ending March 31, 2004

Circuit and District	Total Cases			No Court Action			Court Action					
	Number of Cases	Median Time Interval in Months		Number of Cases	Median Time Interval in Months	Number of Cases	Before Pretrial		During or After Pretrial		Median Time Interval in Months	Number of Cases
		Number of Cases	Median Time Interval in Months				Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months		
TOTAL	183,821	8.4	38,067	6.0	122,334	7.1	19,727	13.4	3,693	21.9		
DC	2,214	10.6	995	8.8	1,149	12.3	37	24.5	33	35.0		
1ST	5,448	10.3	1,544	7.4	2,877	10.0	848	15.5	179	23.2		
ME	543	7.6	203	4.8	219	7.8	92	30.9	29	15.8		
MA	2,406	10.3	1,015	7.4	1,004	9.6	310	17.4	77	31.5		
NH	486	8.7	76	4.3	196	4.9	204	14.4	10	19.5		
RI	541	9.6	117	6.8	235	7.0	174	12.1	15	23.0		
PR	1,472	13.5	133	12.4	1,223	13.7	68	18.0	48	20.0		
54												
2ND	18,059	9.5	4,640	8.4	10,867	8.3	2,236	15.3	316	28.4		
CT	1,722	10.9	1,160	9.1	488	11.0	28	32.5	46	32.0		
NY,N	982	12.7	135	7.8	564	10.9	265	17.0	18	24.5		
NY,E	5,364	10.8	1,111	7.4	3,504	10.1	636	16.8	113	31.5		
NY,S	8,533	7.8	2,061	9.3	5,192	5.1	1,165	12.9	115	23.2		
NY,W	1,144	11.9	147	8.9	846	10.0	139	17.0	12	37.0		
VT	314	7.6	26	6.0	273	7.8	3	-	12	24.0		
54												
3RD	18,155	7.0	3,439	5.1	11,971	7.7	2,378	13.5	367	22.7		
DE	1,027	12.3	66	2.5	876	13.0	55	13.4	30	26.4		
NJ	5,323	8.8	975	5.5	2,389	5.0	1,871	13.5	88	31.5		
PA,E	7,233	6.4	952	5.3	5,909	5.6	242	11.4	130	16.7		
PA,M	1,657	8.5	523	4.9	956	8.2	115	18.5	63	21.7		
PA,W	2,603	10.0	844	8.0	1,617	10.8	87	25.0	55	31.5		
VI	312	13.8	79	10.0	224	15.8	8	-	1	-		
4TH	13,815	8.7	2,834	5.0	9,172	8.5	1,510	10.0	299	16.9		
MD	2,930	7.7	1,193	7.6	1,474	6.8	204	11.2	59	21.7		
NC,E	911	10.0	166	7.9	721	10.5	8	-	16	21.8		
NC,M	715	11.7	148	6.5	349	12.7	205	12.7	13	25.0		
NC,W	708	9.7	195	8.3	391	9.7	115	16.7	7	-		
SC	3,181	9.2	335	6.5	2,386	7.1	414	15.5	96	17.3		
VA,E	2,669	5.2	525	3.7	1,545	5.8	523	7.3	76	9.9		
VA,W	1,114	9.3	196	8.0	870	10.4	29	11.0	19	16.0		
WV,N	601	7.0	48	8.2	537	7.4	10	13.0	6	-		
WV,S	986	11.1	28	5.0	949	11.4	2	-	7	-		

Table C-5. (March 31, 2004—Continued)

Circuit and District	Total Cases			No Court Action			Before Pretrial			During or After Pretrial			Court Action		
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		Number of Cases	Median Time Interval in Months	During or After Pretrial		Number of Cases	Median Time Interval in Months	
							Median	Time Interval in Months			Median	Time Interval in Months			
5TH	23,239	8.4	3,903	8.8	16,868	7.4	1,956	12.7	512	18.9					
LA,E	2,808	9.6	30	2.0	1,586	6.2	1,076	12.5	116	16.2					
LA,M	710	11.7	6	-	700	11.9	-	-	4	-					
LA,W	1,644	12.7	697	11.2	861	11.9	28	19.4	58	21.3					
MS,N	1,185	9.8	158	5.3	828	9.1	163	15.6	36	22.8					
MS,S	3,371	8.7	1,478	8.0	1,824	7.0	5	-	64	18.5					
TX,N	3,643	6.8	176	4.3	3,386	6.7	4	-	77	20.2					
TX,E	2,244	6.2	163	10.5	1,907	5.7	127	12.0	47	18.8					
TX,S	5,416	5.9	484	7.9	4,351	4.9	525	11.2	56	18.2					
TX,W	2,218	8.8	711	8.8	1,425	8.1	28	13.0	54	17.3					
6TH	16,920	10.2	3,317	6.6	10,372	9.2	2,900	13.9	331	20.8					
KY,E	2,037	11.8	140	5.1	1,834	11.6	38	17.3	25	17.5					
KY,W	1,221	10.8	184	7.9	883	9.4	138	15.0	16	21.0					
MI,E	3,679	9.6	881	5.0	1,456	7.7	1,287	13.0	55	24.8					
MI,W	1,045	8.9	138	3.1	872	9.8	13	19.0	22	17.5					
OH,N	3,104	8.7	910	6.2	1,436	8.1	700	10.6	58	20.0					
OH,S	2,361	12.3	807	9.6	1,262	12.4	251	16.5	41	24.0					
TN,E	1,344	11.3	186	8.4	655	9.9	469	15.6	34	16.0					
TN,M	1,325	11.2	27	4.5	1,249	10.6	2	-	47	21.0					
TN,W	804	10.3	44	6.0	725	10.7	2	-	33	19.7					
7TH	16,078	6.1	3,035	5.7	11,110	5.4	1,681	12.2	252	24.0					
IL,N	9,279	5.3	2,022	5.8	6,496	4.6	632	13.4	129	27.3					
IL,C	771	8.0	158	7.0	579	8.6	10	20.5	24	21.0					
IL,S	820	9.5	134	5.2	631	9.4	27	22.7	28	24.0					
IN,N	1,354	9.3	189	6.0	628	6.9	513	13.3	24	22.0					
IN,S	2,366	11.2	233	4.5	1,863	11.0	252	16.5	18	21.0					
WI,E	994	7.6	250	4.6	701	8.2	29	18.0	14	23.0					
WI,W	494	4.3	49	2.2	212	3.0	218	6.0	15	9.0					
8TH	12,061	9.7	2,647	8.5	7,854	8.0	1,252	13.0	308	19.2					
AR,E	1,543	12.3	338	12.4	1,131	11.8	21	16.0	53	20.0					
AR,W	1,044	11.2	14	7.0	986	10.9	11	13.0	33	14.8					
IA,N	434	11.5	54	5.6	348	11.7	7	-	25	20.0					
IA,S	610	10.9	52	4.0	346	7.4	199	15.1	13	22.0					
MN	3,773	6.5	665	4.9	2,225	5.8	847	10.1	36	23.5					
MO,E	1,694	9.7	488	9.4	1,152	9.8	2	-	52	18.1					
MO,W	1,649	10.9	758	10.0	780	11.5	79	16.6	32	18.7					
NE	725	10.2	21	4.0	601	9.1	60	15.9	43	17.0					
ND	258	9.4	78	5.4	162	10.2	7	-	11	18.0					
SD	331	10.4	179	9.3	123	10.3	19	16.4	10	23.0					

Table C-5. (March 31, 2004—Continued)

Circuit and District	Total Cases			No Court Action			Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
							Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
9TH	29,270	8.3	8,951	6.2	17,848	8.2	1,967	13.9	504	23.5		
AK	294	9.1	2	-	280	8.5	1	-	11	29.0		
AZ	2,093	10.4	546	9.6	1,483	11.6	9	-	55	30.0		
CA, N	4,120	8.0	1,435	5.4	1,259	9.4	1,362	11.1	64	23.0		
CA, E	2,138	9.8	499	8.5	1,603	9.9	5	-	31	29.0		
CA, C	9,670	7.0	3,688	7.0	5,806	6.6	29	13.5	147	19.6		
CA, S	2,009	6.9	85	3.9	1,904	6.2	-	-	20	28.0		
HI	912	14.9	350	8.9	271	9.7	277	72.6	14	31.0		
ID	431	12.2	22	4.0	329	10.0	64	16.6	16	18.5		
MT	603	12.4	109	8.4	327	9.8	142	17.3	25	20.4		
NV	1,760	7.0	312	5.3	1,413	8.3	2	-	33	27.5		
OR	1,583	9.5	517	7.9	984	9.6	47	17.5	35	24.4		
WA, E	670	9.4	75	7.7	571	9.9	18	13.0	6	-		
WA, W	2,912	6.3	1,304	4.2	1,554	8.1	10	14.0	44	15.8		
GUAM	35	11.0	5	-	28	10.4	1	-	1	-		
NMI	40	8.7	2	-	36	8.0	-	-	2	-		
10TH	8,928	9.2	928	6.2	6,412	8.9	1,347	12.1	241	20.0		
CO	2,012	8.2	31	4.7	1,665	7.2	244	23.0	72	28.7		
KS	1,310	9.6	291	8.2	948	9.3	42	17.4	29	22.0		
NM	1,326	10.3	55	4.8	843	9.7	391	12.6	37	20.0		
OK, N	747	9.6	23	3.2	694	9.7	11	18.0	19	19.0		
OK, E	512	8.4	102	5.2	373	8.9	27	8.9	10	12.5		
OK, W	1,508	8.8	359	5.5	612	8.3	502	9.8	35	13.3		
UT	1,228	11.7	15	8.5	1,174	11.0	21	18.0	18	21.0		
WY	285	9.2	52	4.4	103	8.6	109	10.7	21	13.5		
11TH	19,634	8.1	1,834	6.1	15,834	7.9	1,615	13.3	351	20.5		
AL, N	2,710	8.5	578	8.7	2,027	8.2	74	17.9	31	25.0		
AL, M	870	10.6	15	2.0	826	9.7	15	14.4	14	15.4		
AL, S	716	8.2	149	7.0	536	8.8	21	15.5	10	22.0		
FL, N	752	7.3	143	7.3	592	7.2	4	-	13	19.0		
FL, M	4,823	8.3	193	7.2	4,502	7.5	54	20.6	74	19.2		
FL, S	5,292	6.8	313	3.6	4,472	5.5	393	11.3	114	19.6		
GA, N	3,183	8.8	294	4.8	1,793	6.8	1,033	13.7	63	22.7		
GA, M	759	11.5	101	8.6	625	11.1	13	16.0	20	28.5		
GA, S	529	9.4	48	9.0	461	9.4	8	-	12	13.5		

NOTE: MEDIAN TIME INTERVALS COMPUTED ONLY IF 10 OR MORE CASES. THIS TABLE EXCLUDES LAND CONDEMNATIONS, PRISONER PETITIONS, DEPORTATION REVIEWS, RECOVERY OF OVERPAYMENTS, AND ENFORCEMENT OF JUDGMENTS. FOR FISCAL YEARS PRIOR TO 2001, THIS TABLE INCLUDED DATA ON RECOVERY OF OVERPAYMENTS AND ENFORCEMENT OF JUDGMENTS.